STATE OF MICHIGAN

COURT OF APPEALS

STEVEN L. AIKEN, Plaintiff-Appellee,	UNPUBLISHED April 19, 2005
v	No. 259527 Otsego Circuit Court
KARIN C. SIMMONDS, Defendant-Appellant.	LC No. 04-010731-DC

Before: Cavanagh, P.J., and Jansen and Gage, JJ.

PER CURIAM.

Defendant appeals as of right the judgment granting plaintiff sole legal and physical custody of the parties' child and the order denying defendant's motion for rehearing. We reverse and remand.

The parties stipulated to a judgment granting plaintiff sole legal and physical custody of their child. When the parties made the agreement, plaintiff resided in Otsego County, Michigan, and defendant resided in Harrison County, Indiana. Nearly two months passed between the time the parties entered into the agreement and the time plaintiff presented the judgment for entry as an order. During these two months, plaintiff moved to the Louisville, Kentucky area, apparently within thirty-two miles of defendant. Defendant's objection to entry of the judgment was returned and, there being no objection, the trial court signed it. Defendant contends that this violated the court rules.

Although it is apparent that defendant objected to entry of the judgment, the lower court record does not contain the objection.[1] It was therefore technically not raised in the trial court and is not preserved. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). However, the "purpose of the appellate preservation requirements is to induce litigants to do what they can in the trial court to prevent error and eliminate its prejudice, or to create a record of the error and its prejudice." *People v Mayfield*, 221 Mich App 656, 660; 562 NW2d 272 (1997). Defendant made an effort to raise this issue before the trial court and is not attempting to

[1] It appears as if the objection was returned because it failed to comply with an unspecified court rule.

"harbor error as an appellate parachute." *Jerico Construction, Inc v Quadrants, Inc*, 257 Mich App 22, 38; 666 NW2d 310 (2003). Thus, defendant's failure to preserve the issue is not attributable to the behavior the preservation requirements seek to deter. Because the necessary facts to resolve the issue are not disputed, and it is otherwise an issue of law, we review it despite the technical violation of the preservation rule. *Poch v Anderson*, 229 Mich App 40, 52; 580 NW2d 456 (1998).

In custody cases, we apply three standards of review. *Thompson v Thompson*, 261 Mich App 353, 358; 683 NW2d 250 (2004). The great weight of the evidence standard applies to all findings of fact. *Id.* We review a trial court's discretionary rulings, such as custody decisions, for an abuse of discretion, and we review questions of law for clear legal error. *Id.* A trial court commits clear legal error when it incorrectly chooses, interprets, or applies the law. *Id.* Decisions regarding motions for rehearing or reconsideration are also reviewed for an abuse of discretion. *Ensink v Mecosta Co General Hospital*, 262 Mich App 518, 540; 687 NW2d 143 (2004).

Interpretation of a court rule follows the general rules of statutory construction, requiring a reasonable construction "in accordance with the ordinary and approved usage of the language in light of the purpose to be accomplished by its operation." *Lockhart v Thirty-Sixth Dist Court Judge*, 204 Mich App 684, 688-689; 516 NW2d 76 (1994). Construction of court rules should avoid absurd or unreasonable results and "avoid the consequences of error that does not affect the substantial rights of the parties." *Id*. at 689; MCR 1.105.

MCR 2.602(B)(3) provides that "a party may serve a copy of the proposed judgment" on the other parties within "7 days after the granting of the judgment." If no written objections are filed within 7 days, the court shall then sign it if it comports with the court's decision. *Id.* "By its own terms, MCR 2.602(B)(3) comes into operation '[w]ithin 7 days *after the granting of the judgment.*'" *Hessel v Hessel*, 168 Mich App 390, 396; 424 NW2d 59 (1988) (emphasis in original). The court rule is inapplicable where the trial court does not render a judgment. *Id*. In the instant case, the parties reached a stipulated agreement, but no judgment was *granted* by the trial court. Therefore, MCR 2.602(B)(3) was not available as a method of entering the judgment.

The court rule provides three other methods for entering an order or judgment. MCR 2.602(B)(1) provides that a court may sign the judgment when it grants the relief the judgment provides. However, this method fails for the same reason: "such an event customarily occurs in the presence of counsel in open court following a hearing." *Cheron, Inc v Don Jones, Inc*, 244 Mich App 212, 223; 625 NW2d 93 (2000) (Griffin, J., concurring in part and dissenting in part). Furthermore, the trial court did not grant the relief specified in the judgment. Rather, the parties agreed to it without the trial court's involvement. MCR 2.602(B)(2) allows entry of a judgment if the parties approve its form and the trial court determines that the judgment "comports with the court's decision." Because the trial court made no decision in this case, the judgment could not have comported with it. Finally, under MCR 2.602(B)(4), "A party may prepare a proposed judgment or order and notice it for settlement before the court." Although plaintiff presented notice of intent to have the judgment entered, plaintiff did not "notice it for settlement before the court." Thus, none of the four allowed methods for entering an order or judgment were available.

Again, construction of a court rule should "avoid the consequences of error that does not affect the substantial rights of the parties." MCR 1.105. Violation of a court rule will therefore not necessarily warrant reversal unless the violation prejudiced a party. *Longworth v Michigan Dep't of Hwys and Transportation*, 110 Mich App 771, 778-779; 315 NW2d 135 (1981). Defendant correctly argues that changing a custody order based on a changed circumstance requires a condition that changes *after* entry of a custody order. *Vodvarka v Grasmeyer*, 259 Mich App 499, 508, 513-514; 675 NW2d 847 (2003). We make no decision with regard to whether plaintiff's change of address, in between the time the parties entered into an agreement and the time plaintiff presented the judgment for entry as an order, constitutes a changed circumstance. However, entry of the judgment as an order precludes defendant from using it as a ground for a motion to change custody because the move occurred before it was entered, but after the underlying facts had changed. Therefore, entry prejudiced defendant's ability to seek relief on that ground.

Because the trial court violated MCR 2.602(B) by entering the judgment and defendant was prejudiced thereby, we vacate its entry and remand for further proceedings. It is therefore unnecessary to address defendant's argument concerning rehearing.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Hilda R. Gage